Department for Education

Regulated activity in relation to children: scope

Factual note by HM Government

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Introduction

Regulated activity is work that a barred person must not do. This note provides information on the scope of Regulated Activity in relation to children, defined in the Safeguarding Vulnerable Groups (SVG) Act 2006 and the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007, both as amended (in particular by, respectively, section 64 and Schedule 7, Protection of Freedoms Act 2012). This note is about the law in England and Wales, and in Northern Ireland.

This note comprises a short summary, and a full description.

Regulated activity still excludes family arrangements; and personal, non-commercial arrangements.

Summary

The new definition of regulated activity (i.e. work that a barred person must not do) in relation to children comprises, in summary:

i. unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice/ guidance on well-being, or drive a vehicle only for children;
ii. work for a limited range of establishments (‘specified places’), with opportunity for contact: e.g. schools, children’s homes, childcare premises. Not work by supervised volunteers;

Work under (i) or (ii) is regulated activity only if done regularly: “regularly” is defined in detail on the following pages under items (a) to (f).

HM Government is publishing statutory guidance on supervision of activity that would be regulated activity if unsupervised.

iii. relevant personal care, e.g. washing or dressing; or health care by or supervised by a professional;
iv. registered childminding; and foster-carers.

A full detailed description of the above scope follows below.

Full description of scope

Part 1: Regulated Activity for children – Activities

The activities in the left-hand column are regulated activity in relation to children, subject to:

- exceptions in the right-hand column;
- different provisions for "establishments" (specified places) in Part 2 below.

Do not read the left-hand column in isolation from the right-hand column or from Part 2.

In the right-hand column:

- "new" exceptions are those in the 2012 Act;
- "existing" exceptions are already in the 2006 Act or 2007 Order as amended before the 2012 Act, or in secondary legislation under it.

Activity	Exceptions – not Regulated Activity
All of regulated activity.	Activity by a person in a group assisting or acting on behalf of, or under direction of, another person engaging in regulated activity in relation to children. This is the "peer exemption".
In para 2(1) of Schedule 4[1]:	
(a) Teaching, training or instruction of children, carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period, or overnight*. Day to day management or supervision on a regular basis of a person providing this activity which would be regulated if unsupervised. Para 1(15[2]). *Sources: • once a week: guidance, March 2010, Annex B, page 70 para B.12; • four or more days/ overnight: Schedule 4, para 10(1) as amended.	New: • Supervised activity - under reasonable day to day supervision by another person engaging in regulated activity. Para 2(3A) Existing: • Activity relating to a child in the course of his employment, not by a person for whom arrangements exist principally for that purpose. • Activity merely incidental to activity with adults.

[1] References to "Schedule 4" should be read as "Schedule 2" in the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (SVG Order).

[2] Para 1(13) in the SVG Order.

Activity	Exceptions – not Regulated Activity
(b) Care or supervision of children if carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period or overnight. • See rows (i) to (iii) below re types of care. Day to day management or supervision on a regular basis of a person providing this activity which would be regulated if unsupervised.	New: • Supervised activity - under reasonable day to day supervision by another person engaging in regulated activity. Para 2(3B)(b). Existing: • Activity relating to a child in course of his employment, not by person for whom arrangements exist principally for that purpose. • Activity merely incidental to activity with adults.
Particular types of care within (b) above, which apply to any child, even if done only once: (i) to (ii) below.	
(i) Relevant personal care. Para 1(1B): (a) physical help in connection with eating or drinking, for reasons of illness or disability; (b) physical help for reasons of age, illness, or disability, in connection with: • (i) toileting (including re menstruation); • (ii-iii) washing, bathing, or dressing; (c)-(d) prompting with supervision, in relation to (a)-(b), where the child is otherwise unable to decide; (e)-(f) other training or advice in relation to (a)-(b).	
(ii) Health care. Para 1(1C): All forms of health care relating to physical or mental health including palliative care and procedures similar to medical or surgical care.	New: • Health care not by, or directed or supervised by, a health care professional*. Para 2(3B)(a). *Defined by reference to regulatory bodies. Para 1(1C).
(c) Advice or guidance provided wholly or mainly for children relating to their physical, emotional or educational well-being if carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period or overnight.	New: • Legal advice. Para 2(3C); Existing: • Activity relating to a child in course of his employment, not by person for whom arrangements exist principally for that purpose.

Activity	Exceptions – not Regulated Activity
(a), (b) & (c): Definition of "overnight": In relation to teaching, training or instruction; care or supervision; or advice or guidance, it is also regulated activity if carried out (even once) at any time between 2am and 6am and with an opportunity for face-to-face contact with children. Schedule 4, Para 10(2).	
Former category (d), treatment or therapy, is now replaced by "health care" provisions.	
(e) Moderating a public electronic interactive communication service likely to be used wholly or mainly by children, carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period.	Existing: • Activity by a person who does not have access to the content of the matter, or contact with users.
(f) Driving a vehicle being used only for conveying children and carers or supervisors under arrangements as prescribed*, carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period. *Prescribed by SI 2009-1548[3].	
In para 1 of schedule 4:	
(3) Early years or later years childminding* with a requirement to register, or voluntary registration, under Childcare Act 2006[4]. *That is: on domestic premises, for reward; as opposed to "childcare premises", part 2 below.	
(5) Fostering** a child. **Defined at section 53[5].	Existing: • Care arranged by family members and not for reward is not regulated activity. Section 53(8)[6]. • Local Authority can foster child with barred person who is, or lives with, a relative of the child. SI 2009-1797, Art 3(2).

[3] In Northern Ireland: Statutory Rule S.R. 2009/306.

[4] In Northern Ireland: requirement to register is provided for under Children (Northern Ireland) Order 1995.

[5] In Northern Ireland: Article 55, SVG Order 2007.

[6] In Northern Ireland: family or personal relationships are exempt under Article 3, SVG Order 2007.

Activity	Exceptions – not Regulated Activity
(6) & (9) to (13)***: Wales only: • child minding with requirement to register under Children Act 1989 including activities that require registration if child under eight; • functions of Children's Commissioner for Wales and deputy; • inspection functions in relation to education, training, childcare and children's health or social care. ***In Northern Ireland: (6), (6A), (7A) & (8): • Guardians Ad Litem; • Controllers appointed under Mental Health (NI) Order 1986; • Inspection/ Registration functions in education, training, juvenile justice, childcare, and children's health or social care.	
(14)[7] Day to day management on a regular basis of a person providing a regulated activity in Schedule 4, paragraphs 1(1) or (2) – that is, activity: • at (a) to (f) above; or • in establishments in part 2 below; and • (9C) or (11) in Wales only.	

[7] In Northern Ireland: Para 12 of Schedule 2 in SVG Order 2007.

Part 2: Regulated Activity in relation to Children – Establishments

An activity is regulated activity in relation to children if carried out (subject to exceptions below):

- in one of the following establishments;
- frequently (once a week or more often), or on 4 or more days in a 30-day period;
- by the same person, engaged in work for or in connection with the purposes of the establishment; and
- it gives the person the opportunity, in their work, to have contact with children.

Day to management or supervision on a regular basis of a person providing the above regulated activity for children is regulated activity for children.

Establishment	Exceptions – not Regulated Activity
Schedule 4, para 3(1):	
(a) schools (all or mainly full-time, for children); (aa) pupil referral units (also known as Short Stay Schools) not falling within the above; (b) nursery schools; (d) institutions for the detention of children; (e) & (f) children's homes; (fa) children's centres in England; (g) childcare premises (including nurseries). Day to day management or supervision on a regular basis of a volunteer activity which would be regulated if unsupervised. Para 1(15). In Northern Ireland (under Schedule 2, Para 3(1) of the SVG Order): (a) schools (all or mainly full-time, for children); (b) nursery schools; (bb) Alternative Education Provision; (c) a children's hospital; (d) institutions for the detention of children; (e) children's homes; (f) childcare premises.	New: • Activity by person contracted (or volunteering) to provide occasional or temporary services (not teaching, training or supervision of children). Para 1(2A) & (2B)(a); • Volunteering, under day to day supervision of another person engaging in regulated activity. Para 1 (2B)(b). Existing: • Activity by a person in a group assisting or acting on behalf of, or under direction of another person engaging in regulated activity; • childcare premises which are the home of a parent etc. of at least one child to whom the childcare or child minding is provided; • for activity undertaken regularly in a number of different establishments, but only infrequently in each: each establishment is only arranging the activity infrequently, so each establishment is not a regulated activity provider in relation to that activity.

Establishment	Exceptions – not Regulated Activity
In Northern Ireland: day to day management or supervision on a regular basis of a volunteer activity which would be regulated if unsupervised. Para 1(13).	

Note: Categories for office holders ("Positions" - Para 1(9) and Para 4) and for Inspectorates in England (sub-paragraphs of Para 1) are removed. In Northern Ireland, categories for office holders ("Positions" – Para 1(7) and Para 4) are removed.

Department
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